

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 395 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NARMADABEN LIRA

Versus

MAHENDRA MOHANLAL CHUDASAMA

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Appearance:

MR SURESH M SHAH for Petitioners  
SERVED BY DS for Respondent No. 1  
MR TUSHAR MEHTA for Respondent No. 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/04/96

ORAL JUDGEMENT

1. Rule. Mr.C.H.Vora appears for respondent No.1 and Mr.Tushar Mehta appears for respondent No.2 and both waive service of rule on behalf of respective respondents. With the consent of learned advocates for the parties matter is finally heard and decided to day.

2. The petitioners are original plaintiffs who are aggrieved by the judgment and order passed in Civil Misc.Appeal No.154/94 by the Extra Asstt.Judge, Jamnagar dated 29.11.1995. By the impugned order the lower appellate court has allowed the appeal of the present respondent No.1 and has quashed and set aside the order passed by the Joint Civil Judge (JD), Jamnagar below Exh.5 in RCS No.218/95. The Extra Asstt.Judge, Jamnagar has further observed that the plaintiff shall be at liberty to move an application for restoration of electricity supply in the premises in question by complying with the mandatory condition prescribed by the GEB.

3. It appears that there exists a dispute between the petitioners and the respondent No.1 with respect to suit property bearing City Survey No.168160/e/7. It is the case of the petitioner-plaintiffs that they are the co-owners of the suit premises along with one Diwaliben Divji from whom the property in question was purchased by respondent No.1. It appears that in the suit premises there was electricity supply to the Consumer No.D.1171790 at the premises bearing S.No.160/e/7 at Jamnagar and the suit premises is situated at Ward No.7. The property originally belonged to one Jethabhai Gokal in which plaintiffs had 1/2 share and according to plaintiff No.2 he is in occupation of the of the upper floor of the premises since last many years. Another co-owner being Diwaliben Devjibhai had sold her share to the respondent No.1 and according to the plaintiff No.1 such transaction of the share was in ignorance of the right of the plaintiff No.1 and therefore the plaintiff No.1 had filed RCS No.602/93 before the Civil Judge (SD), Jamnagar. Said suit is still pending. It is the further case of the plaintiffs that with a view to harass the plaintiffs the respondent No.1 herein had adopted various means to see that the electricity supply to plaintiff is denied. There was already electric supply in the suit premises in the name of Anand Jetha and the meter was also installed in the premises in the possession of the plaintiff. It was the further case of the plaintiff that present respondent No.2 got the electricity connection transferred in his own name on the basis of sale deed which is under challenge and he got such electricity connection disconnected so that the plaintiff can be pressurised to vacate the suit premises. When the plaintiff came to know about this situation he approached the GEB for restoration of electricity supply but the present respondent No.1 objected and filed RCS No.119/95 for injunction. Such suit which was filed by the respondent no.1 is unconditionally withdrawn by the

respondent No.1. It is thereafter, that the question has arisen as to whether the electricity supply should be restored to the present plaintiff which was got disconnected by the respondent No.1.

4. It is undoubtedly true that there exists dispute between the parties about the ownership of the property. Said dispute is to be decided finally in the present suit as well as in another suit which is filed by the present plaintiff and which is pending in the trial court. The present order of the court has no bearing, whatsoever, on the right, title or interest of the party with respect to the suit property. The question of ownership or otherwise over the suit property shall have to be decided by the trial court without being influenced by any observations made by this court in this judgment.

5. In my opinion, when the plaintiff is claiming the right of ownership over the part of the premises and when the plaintiff is said to be in possession of the part of the premises, it would be just and proper to direct the GEB to supply fresh electricity connection on petitioners applying to the GEB for fresh connection and on their fulfilling other conditions required to be fulfilled. It is further directed that the liability to pay the consumption charges as well as other charges which are recoverable by the GEB pursuant to grant of connection to the plaintiff shall be borne by the plaintiffs individually and that for such liability the respondent No.1 shall not be in anyway responsible. The charges or liability, if any, incurred by the plaintiffs vis-a-vis GEB shall not create no charge over the property in question. The grant of electricity supply to the plaintiffs under the orders of this court shall not be used as a factor by the plaintiffs to claim any proprietary or ownership right in their favour with respect to the suit property nor would the trial court give any importance to this particular fact because the present order for giving fresh electricity connection is made without prejudice to the right of ownership of the parties vis-a-vis suit property.

5. In view of the aforesaid directions, the plaintiffs shall apply for fresh electricity connection in the suit premises within three weeks from today and shall comply with terms and conditions which are required to be complied with for grant of fresh electricity connection and on such application being made the GEB shall by processing the same in accordance with law grant electricity connection within six weeks. Rule is made absolute accordingly to the aforesaid extent. No

costs.

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